R & D Trucking, Inc. ***and*** **Teamsters Local Union No. 833, AFL–CIO, Petitioner.** Case 17–RC–11601

January 29, 1999

DECISION ON REVIEW AND ORDER

BY MEMBERS FOX, LIEBMAN, AND BRAME

On March 6, 1998, the Regional Director for Region 17 issued a Decision and Direction of Election in which he found appropriate the petitioned-for unit of drivers and dockworkers at the Employer's Interstate Drive location in Columbia, Missouri, and excluded employee William Howard, the son-in-law of the Employer's president, from the bargaining unit. Thereafter, pursuant to Section 102.67 of the National Labor Relations Board's Rules and Regulations, the Employer filed a timely request for review of the Regional Director's Decision, asserting that the unit must also include the drivers and dockworkers servicing the Employer's Textron account who work on location at Textron, as well as employee Howard. By Order dated March 31, 1998, the Board granted the Employer's request for review.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Having carefully considered the entire record, including the Petitioner's brief on review, we reverse the Regional Director's decision and find that the single-facility presumption favoring a unit of employees at the Interstate location has been rebutted. In addition, we affirm the Regional Director's decision to exclude employee William Howard based on the job-related privileges afforded him as the son-in-law of the Employer's president.

I. THE APPROPRIATE UNIT

The Employer is engaged in moving freight and trailers, as well as local cartage delivery, from its Interstate location in Columbia, Missouri. Seven drivers and dockworkers start and end their working day at the Interstate location. These seven employees load and unload freight from trucks and drive delivery routes servicing various customers that may range from 150 to 275 miles roundtrip.

In addition to its operation at the Interstate location, the Employer stations three drivers at a facility operated by another customer, Textron, in order to service its contract with Textron. These three drivers load and move freight solely at the Textron facility. The Textron facility is located approximately 5 miles from the Employer's Interstate location. The Employer previously had a contract with Textron from 1993 until 1994, during which time the Employer also employed three drivers at Textron to load freight and move trailers around the Textron premises. In 1994, the Employer lost the Textron account, and two of the employees working at Textron transferred to local cartage positions at the Employer's Interstate location. In January 1998, the Employer again contracted to service the Textron account. Ron Lechenette, the Employer's president, offered the three available positions at the Textron facility to all of the Employer's current drivers. As none accepted a position, Lechenette hired three new employees to service the Textron account.

The Employer has no physical presence at Textron. The Employer neither owns nor leases space at Textron. Also, it has no office, telephone, or on-site supervisor at Textron. President Lechenette supervises all employees at both locations and does all of the hiring and firing, imposes discipline, sets wages, assigns work, grants wage increases, and establishes all employee policies. Textron personnel direct the Employer's drivers as to where to park their vehicles or where to deliver their freight. The drivers at the Interstate location are given similar instructions from the various customers they service.

Wages for employees at the Interstate location start at \$9 per hour, while the employees working at Textron start at \$12 per hour. Employees at Interstate work 8-hour daytime shifts, while the shifts at Textron are staggered to cover its around-the-clock operation. All employees receive the same benefits; have the same holidays; are subject to the same drug, alcohol, and personnel policies; are paid bi-weekly; pick up their paychecks at the Interstate location; and are interviewed and hired at the Interstate location.

Regarding their skills and functions, drivers at both locations load and unload freight. The drivers working from the Interstate facility deliver freight over-the-road, while the drivers stationed at Textron move the freight from one place on the Textron premises to another. All drivers are required to have the same Class A license and Hazmat certification. When the Employer previously serviced the Textron account, employees were regularly moved back and forth between the Textron location and the Interstate location. Lechenette further testified that employees were temporarily transferred between locations when there were scheduling delays or high freight volume. President Lechenette testified that based on customer needs, driver shortages, and other business considerations, he would continue to use interchangeably the drivers stationed at Textron and the drivers working from Interstate. Although the Employer had again begun supplying drivers to Textron for only about a month before the hearing, the Employer had already temporarily reassigned a driver working at Textron to an Interstate route. At least one driver stationed at Textron has indicated he desires a permanent transfer to an Interstate route when a vacancy occurs.

It is well established that a single-facility unit is presumptively appropriate and that therefore, unless it has been effectively merged into a more comprehensive unit, or is so functionally integrated with another unit that it has lost its separate identity, it is an appropriate unit. *J &*

L Plate, 310 NLRB 429 (1993); *Dixie Belle Mills, Inc.*, 138 NLRB 629, 631 (1962). To determine whether the presumption has been rebutted, the Board looks at such factors as control over daily operations and labor relations, including extent of local autonomy; similarity of skills, functions, and working conditions; degree of employee interchange; the physical and geographical location; and bargaining history, if any. *Esco Corp.*, 298 NLRB 837, 839 (1990), and cases cited therein.

In finding that the single-facility presumption had not been rebutted here, the Regional Director emphasized that the drivers working at Textron had separate immediate supervision, different hours and wage rates, and different functions. The Regional Director concluded, therefore, that the petitioned-for unit of drivers and dockworkers at the Interstate location was appropriate. We disagree. We find that there is sufficient evidence in the record establishing lack of local autonomy, substantial employee interchange, similarity of skills and functions, and similar terms and conditions of employment, to rebut the single-facility presumption and to warrant the inclusion of the drivers stationed at the Textron facility in the bargaining unit.

As noted above, in finding that the Employer had not rebutted the single-facility presumption, the Regional Director relied on the fact that the employees servicing the Textron account were separately supervised from the employees located at Interstate. Contrary to the Regional Director, however, we find that the employees servicing Textron and the Interstate employees are commonly supervised by the Employer's president, Lechenette. The evidence establishes that Lechenette makes the hiring and firing decisions, imposes discipline, grants wage increases, and even assigns work at both locations. The Employer does not station a local manager at Textron, and there is no evidence that any of the employees at Textron has been designated as "in charge" or as a "responsible employee," or that any of the employees acts in a leadperson capacity.[1] The evidence further establishes that employees working at the Textron facility receive no "supervision" from anyone employed by Textron. They simply are directed where to park their vehicles or unload their freight—the same kind of directions that the drivers located at Interstate receive from the customers they serve.

There is, in addition, a history of regular and substantial interchange of drivers between the two locations. When the Employer previously had the contract to service the Textron account, Lechenette regularly transferred employees from one location to the other, sometimes for only part of a shift. Lechenette testified that employees were transferred back and forth at least a dozen times per month, a number that is not insubstantial in light of the fact that the Employer only employs 10 employees. Lechenette also testified that he planned to continue to transfer employees on a temporary basis from one location to the other.[2] Further, with respect to permanent transfers, at least two of the employees who worked at Textron in 1993–1994 transferred to the Interstate operation and are still working for the Employer. Moreover, before the Employer hired employees to serve the newly reacquired Textron account, it offered that work to drivers at the Interstate facility. Thus, the evidence establishes a regular and substantial amount of temporary and permanent interchange of employees between the two locations.

The employees servicing the Textron account and the employees at Interstate also use the same skills and perform almost identical functions. All drivers load and unload freight, and all drive trucks. They are all required to have identical certifications and licenses, and no additional training was necessary for employees stationed at Textron. Clearly, they are qualified to substitute for one another as needed. That the employees stationed at the Interstate facility deliver freight to other customers while those stationed at Textron remain on Textron's premises is not, we believe, a factor that outweighs the similarity of their interchangeable skills and functions.

We also note the Employer's centralized control over operations, personnel functions and labor relations, and the similarities in the terms and conditions of employment for all of the employees. The drivers servicing the Textron account and those working at the Interstate facility are paid similar wages although, as the Regional Director found, there is some difference in the starting wages for the two groups of employees. They receive the same benefits and are subject to the same personnel and drug testing policies. All employees receive their paychecks at the Interstate facility. All employees work 8-hour shifts, although the Textron employees work around-the-clock and the Interstate employees work daytime shifts. The employees at the two locations also share equipment. If a truck used at the Textron facility needs to be repaired, the drivers stationed at Textron will use one of the trucks from the Interstate location. These factors support the Employer's contention that the single-facility presumption has been rebutted.

Under the circumstances present here, and in view of the lack of local autonomy, the substantial and regular interchange, the permanent transfers, and the common

[1] Compare *Esco Corp*, supra. There, the Board found that the single-facility presumption had not been rebutted relying on, inter alia, the presence of a "responsible employee" at the excluded warehouse facility who, although found not to be a statutory supervisor, was responsible for overseeing the operation at the warehouse.

[2] In view of the Employer's history of regularly transferring employees on a temporary basis, and Lechenette's testimony that he planned to continue to do this, the fact that there had been only one temporary transfer in the month between the Employer's having reacquired the Textron account and the hearing does not affect our finding that there has been regular and substantial interchange between the two locations.

benefits, holidays, and employee policies, and the small number of employees, we find that the Employer has rebutted the single-facility presumption and that the smallest appropriate unit must include the Employer's drivers stationed at the Textron facility.

II. THE EXCLUSION OF WILLIAM HOWARD

William Howard is the son-in-law of the Employer's president, Ron Lechenette. Lechenette's daughter, Howard's wife, works in the office as a bookkeeper. Howard delivers freight on one route, and works in the warehouse unloading freight. Howard also works in the office answering phones and working on the computer. As a general rule, none of the other unit employees use on the computer. One employee testified that the employees were told at a meeting that Howard had the same authority as Lechenette, except for the granting of wage increases. On one occasion, Howard told an employee to take as much time as he needed due to a death in the family and told another employee (Davidson) that he was terminated because he was not yet 21. Lechenette testified, however, that it was he who had made the termination decision and that Howard was simply the conduit of the information. Howard is salaried, as are two other employees in the unit, and earns $600 per week. The highest paid salaried unit employee earns $525 per week. Unlike the drivers, Howard is not required to punch a timecard.

We agree with the Regional Director that Howard is properly excluded from the bargaining unit. The Board has long hesitated to include the relatives of management in bargaining units because "their interests are sufficiently distinguished from those of the other employees." See *NLRB v. Action Automotive*, 469 U.S. 490, 494–495 (1985). The Board, however, does not exclude an employee simply because he or she is related to a member of management. *International Metal Products Co.*, 107 NLRB 65 (1953). Rather, the Board considers a variety of factors in deciding whether an employee's familial ties are sufficient to align his interests with management and thus warrant his exclusion from the bargaining unit. The greater the family involvement in the ownership and management of the company, the more likely the employee-relative will be viewed as aligned with management and hence excluded. See *NLRB v. Action Automotive*, supra. The Board utilizes an expanded community of interest test to determine whether relatives of owner-managers should be excluded from the unit. However, in cases where ownership is not an issue, the question is whether the relative enjoys a special status on the job because of their relationship to the nonowner manager. *Cumberland Farms Store*, 272 NLRB 336 fn.2 (1984). See also *Allen Services Co.*, 314 NLRB 1060, 1062–1063 (1994). In the instant case, although Lechenette is the Employer's president, there is no evidence that Lechenette owns the company or is a shareholder in the company, majority or otherwise.

We find, in accord with the Regional Director, that Howard enjoys a special status at his job because of his familial relationship with his father-in-law. Although there is no evidence that Howard is either financially dependent on his father-in-law or living with him, it is clear that Howard has a higher salary than the other unit employees. Moreover, Howard apparently spends a substantial percentage of his time inputting data into the computer and working in the front office, which none of the other unit employees are generally permitted to do. In addition, unlike the unit employees, he is not required to punch a timecard.

Further, it appears that Howard has greater access to his father-in-law than other employees. Indeed, one of the employees testified that he once worked on the computer because Lechenette and Howard were together in Chicago at a meeting. There was no evidence that any of the other unit employees ever accompanied Lechenette to out-of-town meetings. Thus, it appears that Howard's working conditions differ from those of other employees, and, that he enjoys job-related privileges by virtue of his relationship with Lechenette.

Finally, in excluding Howard from the bargaining unit, we note that Howard does fill in for his father-in-law, has been on occasion the conduit for termination decisions emanating from Lechenette, and has approved an employee's time off for a death in the family.

We find on the basis of the foregoing, that Howard's familial relationship has afforded him job-related privileges that are not shared with other unit members, and he appears to have greater access to Lechenette than do the other unit employees. Consequently, under these circumstances, we conclude that Howard's interests are aligned with management and, therefore, he should be excluded from the unit.[3]

ORDER

The Regional Director's Decision is reversed with respect to his finding that the petitioned-for unit is appropriate and is affirmed with respect to his exclusion of employee William Howard from the bargaining unit. The case is remanded to the Regional Director for further appropriate action consistent with this decision.

[3] Compare *Allen Services Co.*, supra, in which the Board included the wife of a statutory supervisor in the unit as she did not enjoy any job-related privileges not shared by other employees in the unit.